

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PERCY JAMES PEARCE,)	
)	
Plaintiff(s),)	No. C06-6357 BZ
)	
v.)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR RECONSIDERATION
JOANNE B. BARNHART,)	
Commissioner of Social)	
Security Administration,)	
)	
Defendant(s).)	
_____)	

On June 25, 2007, plaintiff filed a motion for reconsideration relating to this Court's June 7, 2007 Order dismissing plaintiff's complaint for lack of jurisdiction. After requesting plaintiff to supply me with an exhibit discussed but not provided with his motion, plaintiff submitted the requested exhibit and an additional, lengthy motion for leave to file two additional exhibits.¹

Civil Local Rule 7-9 provides a mechanism for parties to

¹ Although plaintiff's supplement went well beyond what I ordered him to do, I **GRANT** his motion for leave to file the additional exhibits and will consider them to the extent appropriate.

1 request leave of court to file a motion to reconsider
2 interlocutory orders. See Hawks v. Kane, 2006 WL 3526743, at
3 *1 (N.D. Cal. 2006) ("Under local rule 7-9, a party may seek
4 leave to file a motion for reconsideration any time before
5 judgment."). I entered final judgment in this matter on June
6 15, 2007. The judgment having "adjudicated all of the claims
7 and the rights and liabilities of the parties in [the] case,"
8 Civ. L. R. 7-9(a), reconsideration is not available under
9 Local Rule 7-9.

10 Federal Rule of Civil Procedure 59(e), however, allows a
11 party to seek alteration or amendment to a judgment if filed
12 within ten days of its entry. Rule 59(e) is a proper vehicle
13 for a party to seek substantive reconsideration of a summary
14 judgment ruling, Tripati v. Hanman, 845 F.2d 205 n.1 (9th Cir.
15 1988), and also may be utilized in the context of a motion to
16 dismiss. See Zarcone v. U.S., 2004 WL 2196560 (N.D. Cal.);
17 see also Greening v. U.S., 1994 WL 648027 (D. Or.)
18 (reconsidering dismissal for lack of jurisdiction). Because
19 plaintiff's motion was filed within ten days of entry of the
20 judgment, I will consider his motion under Rule 59(e).

21 "There are four grounds upon which a Rule 59(e) motion
22 may be granted: 1) the motion is necessary to correct
23 manifest errors of law or fact upon which the judgment is
24 based; 2) the moving party presents newly discovered or
25 previously unavailable evidence; 3) the motion is necessary
26 to prevent manifest injustice; or 4) there is an intervening
27 change in controlling law." Turner v. Burlington N. Santa Fe
28 R.R. Co., 338 F.3d 1058, 1063 (9th Cir. 2003) (internal

1 quotations and citations omitted). Rule 59(e) "offers an
2 extraordinary remedy, to be used sparingly in the interests
3 of finality and conservation of judicial resources." Kona
4 Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir.
5 2000) (internal quotations and citations omitted).

6 Plaintiff's motion rambles and is unpersuasive. As for
7 the new documents plaintiff provides, Exhibit B purports to
8 demonstrate defendant's "perjury" by impeaching dates on
9 which certain hearings were alleged to have been opened and
10 continued.² Insofar as the document demonstrates that his
11 association with St. Vincent de Paul's in San Francisco began
12 in December 2003, he also argues that the Oakland social
13 security hearing in fact could not have occurred. The dates
14 "impeached," however, had no impact on my conclusion that I
15 lacked jurisdiction over plaintiff's complaint. Certainly,
16 the inclusion of some incorrect dates by the ALJ in his order
17 or by the defendant in her papers does not amount to
18 "perjury" which, in turn, proves up a wide-ranging conspiracy
19 to deprive plaintiff of his benefits. Moreover, plaintiff's
20 unsworn assertion that no Oakland hearing occurred
21 contradicts his own sworn declaration submitted in opposition
22 to defendant's motion to dismiss. See Pearce Decl. at 2.

23 More broadly, plaintiff argues that I committed clear

24
25 ² Exhibit B consists of a single page entitled
26 "Homeless Verification." The document verifies that plaintiff
27 utilized the services of the St. Vincent de Paul Society day
28 center and/or shelter services from December 1, 2003 through
June 15, 2007. Plaintiff also claims that he was unaware of
the document prior to the issuance of my Order and, therefore,
was omitted through no lack of diligence. I will consider
Exhibit B based on plaintiff's representations.

1 error in dismissing his complaint. His contentions center on
2 an alleged inability to develop the record before the ALJ.³
3 According to Pearce, Exhibits C, D and E provide evidence of
4 his attempts to develop the record and to obtain access to
5 his social security file.⁴ Plaintiff, however, does not
6 explain why these documents were not supplied during briefing
7 on the motion to dismiss and, therefore, should not be
8 considered. See Kona Enters., Inc., 229 F.3d at 890 ("A Rule
9 59(e) motion may not be used to raise arguments or present
10 evidence for the first time when they could reasonably have
11 been raised earlier in the litigation."). Worse, the
12 documents constitute unsworn hearsay. In any event,
13 plaintiff's arguments and evidence in no way undermine my
14 conclusion that the defendant's administrative processes
15 provided a meaningful opportunity to be heard and that
16 plaintiff failed to present a colorable due process claim.⁵

17 The remainder of plaintiff's motion either reiterates or
18

19 ³ Pearce argued this point in his previous papers, and
20 I explicitly analyzed the issue in my June 7 Order. See Order
21 Granting Defendant's Motion to Dismiss, at 6-7. It is
22 inappropriate to repackage this argument in a motion for
reconsideration. See Washington v. USDC Southern California,
2007 WL 1795783, at *3 (S.D. Cal. 2007). Nevertheless, I will
consider plaintiff's contention.

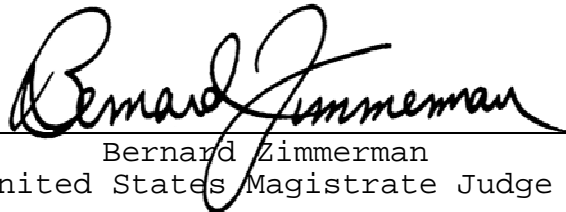
23 ⁴ Exhibit C consists of a single page of notes, written
24 by an unknown author on an unknown date, relating to
25 plaintiff's social security case. Exhibit D is a copy of a fax
26 sheet prepared by an advocate representative at the General
Assistance Advocacy Project. The comments request access to
plaintiff's file prior to a January 2002 ALJ hearing. Exhibit
E consists of a single page of notes, apparently written by
plaintiff himself, around the time of the various hearings.

27 ⁵ In particular, plaintiff still fails to explain why
28 he ignored defendant's notices requesting explanation as to why
his appeal of the ALJ decision was filed untimely.

1 attempts to expand upon arguments presented in defending
2 against dismissal, addresses the merits of his disability
3 claim, or argues for equitable tolling. Motions for
4 reconsideration are not to be used to reargue or repackage
5 previously presented arguments. See Washington v. USDC
6 Southern California, 2007 WL 1795783, at *3 (S.D. Cal. 2007).
7 Plaintiff's arguments going to the merits of his claim are
8 simply irrelevant to the threshold issues resolved on
9 defendant's motion for dismissal. Plaintiff's argument for
10 equitable tolling was addressed in my previous Order. See
11 Order Granting Defendant's Motion to Dismiss, at 7 n.10. In
12 any event, nothing presented here constitutes newly
13 discovered evidence or reveals errors of law or fact.⁶

14 Because plaintiff's motion does not present cause for
15 reconsideration of my dismissal of his complaint, his motion
16 is **DENIED**.⁷

17 Dated: August 3, 2007


Bernard Zimmerman
United States Magistrate Judge

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22 ⁶ Plaintiff repeatedly asserts that various
23 governmental actors conspired to "obliterate" the record of an
24 earlier hearing and to otherwise prevent him from pursuing his
25 claim. These arguments were presented and considered in
relation to the motion to dismiss. To the extent plaintiff
presents new evidence on the alleged conspiracy, I conclude
that his assertions are without factual or legal support.

26 ⁷ As an alternative to reconsideration, plaintiff
27 requests that I grant his "Motion to File Plaintiff's Notice of
28 Appeal." I need not grant plaintiff permission to file an
appeal. If plaintiff wishes to appeal dismissal of his
complaint, he will need to comply with the Federal Rules of
Appellate Procedure and, in particular, Rules 3 and 4.